

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS

CITY OF CINCINNATI,

Plaintiff,

v.

CASE NO. 2:17-cv-713

Judge Edmund A. Sargus

AMERISOURCEBERGEN DRUG CORPORATION,
CARDINAL HEALTH, INC., and
McKESSON CORPORATION,

Defendants.

**PLAINTIFF'S NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM
UPON UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

COMES NOW the Plaintiff, CITY OF CINCINNATI, by counsel, and hereby files its notice¹ of the intent to serve a *subpoena duces tecum* upon the United States Department of Justice to produce data from the *Automated Records and Consolidated Orders System/Diversion Analysis and Detection System* (ARCOS/DADS) (69 FR 51104-02).

1. On October 2, 2017, Plaintiff issued a *Touhy* letter to the United States Department of Justice (DOJ) and the Drug Enforcement Administration (DEA) to produce the ARCOS/DADS database. See Exhibit 1. The DOJ responded on October 11, 2017 as follows:

Given the Court's determination that discovery at this point is premature, your demand to access the entirety of the data in ARCOS is "not appropriate under the rules of procedure governing the case...in which the demand arose." 28 C.F.R. § 16.26(a)(1). Accordingly, the DEA refuses your demand for ARCOS data and does not consent to your request to appear at the next status conference.

¹ "If a subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party." F.R. Civ. Proc. 45(a)(4).

See Correspondence from Mark T. D'Allessandro, U.S. Department of Justice, Assistant United States Attorney for the Southern District of Ohio, dated October 11, 2017 and attached hereto as Exhibit 2.

2. On October 30, 2017, the United States District Court for the Southern District of Ohio, Chief Judge Edmund Sargus presiding, entered an Order authorizing Plaintiff to issue a *subpoena duces tecum* upon the DEA to produce the ARCOS/DADS database. The Court directed as follows:

The DEA will be told do not disclose any information before December 13th, so there's still no discovery between now and December 13th. If the DEA is going to object, they will do so in a timely fashion, and then -- I don't want to rush anybody, but I would say within 14 days, any party -- that would be the plaintiffs or the defendants -- may file a memorandum in opposition, and DEA will have seven days thereafter for a final reply.

So there will be nothing exchanged before December 13th, but, again, it's with the idea of teeing this up, and I also emphasize this is going to be an issue that's going to be presented to some judge somewhere someday. So this is not all going to be for not if the case doesn't end up staying here.

See Exhibit 3.

3. The DOJ, on behalf of the DEA, has agreed to electronically accept service of process of the attached subpoena duces tecum which was effectuated on October 31, 2017. See Exhibit 4.

4. The DEA is commanded to respond by filing a pleading with regard to its position on disclosure on or before November 15, 2017. The parties are directed to file responses thereto on or before November 30, 2017, and the DEA is directed to reply thereto by December 8, 2017.

5. A status conference is for December 13, 2017 at 10:30 am wherein the Court will provide further directives.

Date: October 31, 2017

/s/ Paul T. Farrell, Jr., Esq.
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CERTIFICATE OF SERVICE

I certify that on the 31st day of October, 2017, I electronically filed the foregoing **PLAINTIFF'S NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM UPON UNITED STATES DEPARTMENT OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION** using the CM/ECF system which will send notification of such filing to CM/ECF participants. A copy of this Notice along with the exhibits and subpoena was served electronically upon Mark T. D'Allessandro, U.S. Department of Justice, Assistant United States Attorney for the Southern District of Ohio as counsel for the Drug Enforcement Administration.

/s/ Paul T. Farrell, Jr.
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